

## Commodity Credit Corporation, USDA

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(c) In addition to the provisions in paragraph (b) of this section, tenants must maintain their tenancy throughout the contract period in order to remain on a contract. Tenants who fail to maintain tenancy on the acreage under contract, including failure to comply with provisions under applicable State law, may be removed from a contract by CCC. CCC will assume the tenancy is being maintained unless notified otherwise by a ACRE participant specified in the applicable contract.

### PART 1415—GRASSLANDS RESERVE PROGRAM

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#### § 1415.1 Purpose.

(a) The purpose of the Grassland Reserve Program (GRP) is to assist landowners and operators to protect grazing uses and related conservation values by conserving and restoring grassland resources on eligible private lands through rental contracts, easements, and restoration agreements.

(b) GRP emphasizes:

- (1) Supporting grazing operations;
- (2) Maintaining and improving plant and animal biodiversity; and

(3) Protecting grasslands and shrublands from the threat of conversion to uses other than grazing.

#### § 1415.2 Administration.

(a) The regulations in this part set forth policies, procedures, and requirements for program implementation of GRP, as administered by the Natural Resources Conservation Service (NRCS) and the Farm Service Agency (FSA). The regulations in this part are administered under the general supervision and direction of the NRCS Chief and the FSA Administrator. These two agency leaders:

(1) Concur in the establishment of program policy and direction, development of the National allocation formula, and development of broad national ranking criteria.

(2) Use a national allocation formula to provide GRP funds to NRCS State Conservationists and FSA State Executive Directors that emphasizes support for grazing operations, biodiversity of plants and animals, and grasslands under the greatest threat of conversion to uses other than grazing. The national allocation formula may also include additional factors related to improving program implementation, as determined by the NRCS Chief and the FSA Administrator. The allocation formula may be modified periodically to change the emphasis of any factor(s) in order to address a particular natural resource concern, such as the precipitous decline of a population of a grassland-dependent bird(s) or animal(s).

(3) Ensure the National, State, and local level information regarding program implementation is made available to the public.

(4) Consult with USDA leaders at the State level and other Federal agencies with the appropriate expertise and information when evaluating program policies and direction.

(5) Authorize NRCS State Conservationists and FSA State Executive Directors to determine how funds will be used and how the program will be implemented at the State level.

(b) At the State level, the NRCS State Conservationist and the FSA State Executive Director are jointly responsible for:

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(1) Determining how funds will be used and how the program will be implemented at the State level to achieve the program purposes;

(2) Identifying State priorities for project selection, based on input from the State Technical Committee;

(3) Identifying USDA employees at the field level responsible for implementing the program by considering the nature and extent of natural resource concerns throughout the State and the availability of human resources to assist with activities related to program enrollment;

(4) Developing program outreach materials at the State and local level to help ensure landowners, operators, and tenants of eligible land are aware and informed that they may be eligible for the program;

(5) Approving conservation practices eligible for cost-share and cost-share rates;

(6) Developing grazing management plans and restoration agreements;

(7) Administering and enforcing the terms of easements and rental contracts unless this responsibility is transferred to an eligible entity as provided in § 1415.17 and § 1415.18;

(8) With advice from the State Technical Committee, developing criteria for ranking eligible land, consistent with national criteria and program objectives and State priorities.

(c) The funds, facilities, and authorities of the Commodity Credit Corporation are available to NRCS and FSA to implement GRP.

(d) Subject to funding availability, the program may be implemented in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(e) The Chief, NRCS, or the Administrator, FSA may modify or waive a provision of this part if he or she deems the application of that provision to a particular limited situation to be inappropriate and inconsistent with the conservation purposes and sound administration of GRP. This authority cannot be further delegated. No provision of this part which is required by law may be waived.

(f) No delegation in this part to lower organizational levels shall preclude the Chief, NRCS, or the Administrator, FSA, from determining any issue arising under this part or from reversing or modifying any determination arising from this part.

(g) The USDA Forest Service may hold GRP easements on properties adjacent to USDA Forest Service land, with the consent of the landowner.

(h) Program participation is voluntary.

(i) Applications for participation will be accepted on a continual basis at local USDA Service Centers. Eligible entities wishing to enter into a cooperative agreement under § 1415.17 in order to purchase, own, write, and hold easements may apply on a continuous basis to the NRCS State Conservationist. The State Conservationist and State Executive Director will establish cut-off periods to rank and select applications for participation. These cut-off periods will be available in program outreach material provided by the local USDA Service Center. Once funding levels have been exhausted, unfunded eligible applications will remain on file until they are funded or the applicant chooses to be removed from consideration.

(j) The services of third parties as provided for in part 652 of this title may be used to provide technical services to participants.

#### § 1415.3 Definitions.

*Activity* means an action other than a conservation practice that is included as a part of a grazing management or conservation plan that has the effect of alleviating problems or improving treatment of the resources, including ensuring proper management or maintenance of the functions and values restored, protected, or enhanced through an easement or rental contract.

*Administrator* means the Administrator of the Farm Service Agency (FSA) or the person delegated authority to act for the Administrator.

*Applicant* means a person, legal entity, joint operator, or Indian Tribe who applies to participate in the program.

*Chief* means the Chief of the Natural Resources Conservation Service

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(NRCS) or the person delegated authority to act for the Chief.

*Commodity Credit Corporation (CCC)* is a Government-owned and operated entity that was created to stabilize, support, and protect farm income and prices. CCC is managed by a Board of Directors, subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the Board. The Chief and Administrator are Vice Presidents of CCC. CCC provides the funding for GRP, and FSA and NRCS administer the GRP on its behalf.

*Common grazing practices* means those grazing practices, including those related to forage and seed production, common to the area of the subject ranching or farming operation. Included are routine management activities necessary to maintain the viability of forage or browse resources that are common to the locale of the subject ranching or farming operation.

*Conservation District* means any district or unit of State, Tribal, or local government formed under State, Tribal, or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "natural resource district," "land conservation committee," or similar name.

*Conservation plan* means a record of the GRP participants' decisions and supporting information that will be developed in cases where ranking points are assigned and land is enrolled on the basis of resource concerns in addition to grazing land uses. The conservation plan will include the schedule of operations for the implementation and maintenance of practices directly related to the additional land eligibility criteria under which the land is enrolled.

*Conservation practice* means a specified treatment, such as a vegetative, structural, or land management practice, that is planned and applied according to NRCS Field Office Technical Guide standards and specifications.

*Conservation values* means those natural resource attributes that provide ecosystem functions and values of the grassland area, including but not limited to, habitat for grassland- and shrubland-dependent plants and animals, soil erosion control, and air and water quality protection.

*Cost-share payment* means the payment made by USDA to a program participant or vendor to achieve the restoration, enhancement, and protection goals in accordance with the GRP restoration plan component of the restoration agreement.

*Dedicated account* means a dedicated fund held in a separate account for the management, monitoring, and enforcement of conservation easements and that cannot be used for other purposes.

*Easement* means a conservation easement, which is an interest in land defined and delineated in a deed whereby the landowner conveys certain rights, title, and interests in a property to the United States, an eligible entity, or both for the purpose of protecting the grassland and other conservation values of the property. Under GRP, the property rights are conveyed by a "conservation easement deed."

*Easement area* means the land encumbered by an easement.

*Easement payment* means the consideration paid to a landowner for an easement conveyed to the United States, an eligible entity, or both under GRP.

*Eligible entity* for the purposes of entering into a cooperative agreement under 16 U.S.C. 3838q(d) means an agency of State or local government, an Indian Tribe, or a non-governmental organization that has the relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrubland; has a charter that describes a commitment to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes; and has the resources necessary to effectuate the purposes of the charter.

*Enhancement* means to increase or improve the viability of grassland resources, including habitat for declining species of grassland-dependent birds and animals.

*Farm Service Agency (FSA)* is an agency of the United States Department of Agriculture.

*FSA State Executive Director* means the FSA employee authorized to implement the Grasslands Reserve Program and direct and supervise FSA activities in a State, Caribbean Area, or the Pacific Islands Area.

*Field Office Technical Guide* means the official local NRCS source of resource information and interpretations of guidelines, criteria, and requirements for planning and applying conservation practices and conservation management systems. It contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared.

*Fire pre-suppression* means activities as outlined in a grazing management plan such as the establishment and maintenance of firebreaks and prescribed burning to prevent or limit the spread of fires.

*Forb* means any herbaceous plant other than those in the grass family.

*Functions and values of grasslands and shrublands* means ecosystem services provided, including: Domestic animal productivity, biological productivity, plant and animal richness and diversity, and abundance, fish and wildlife habitat (including habitat for pollinators and native insects), water quality and quantity benefits, aesthetics, open space, and recreation.

*Grantor* means the landowner who is transferring land rights to the United States or an eligible entity, or both through an easement.

*Grassland* means land on which the vegetation is dominated by grasses, grass-like plants, shrubs, or forbs, including shrubland, land that contains forbs, pasture, and rangeland, and improved pasture and rangeland.

*Grazing management plan* means the document developed by NRCS that describes the implementation of the grazing management system consistent with the prescribed grazing standard contained in the Field Office Technical Guide (FOTG). The grazing management plan will include a description of the grazing management system, permissible and prohibited activities, any associated restoration plan or con-

servation plan if applicable, and a description of USDA's right of ingress and egress.

*Grazing value* means the financial worth of the land as used for grazing or forage production. The term is used in the calculation of compensation for rental contracts and easements. For easements, this value is determined through an appraisal process or a market survey process. For rental contracts, FSA determines the grazing value based upon an administrative process.

*Historical and archeological resources* means a resource that is: (1) Listed in the National Register of Historic Places (established under the National Historic Preservation Act (NHPA), 16U.S.C. 470, *et seq.*); (2) Formally determined eligible for listing the National Register of Historic Places by the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) and Keeper of the National Register in accordance with Section 106 or the NHPA); (3) Formally listed in the State or Tribal Register of Historic Places of the SHPO (designated under section 101 (b) (1) (B) of the NHPA) or the Tribal Register of Historic Places (designated under section 101 (d) (1) (C) of the NHPA); or (4) Included in the SHPO or THPO inventory with written justification as to why it meets National Register of Historic Places criteria.

*Improved rangeland or pastureland* means grazing land permanently producing naturalized forage species that receives varying degrees of periodic cultural treatment to enhance forage quality and yields and is primarily harvested by grazing animals.

*Indian Tribe* means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is eligible for the special programs and services provided by the United States to Indians because of their status as Indians (25 U. S. C. 450b(e)).

*Landowner* means a person, legal entity, or Indian Tribe having legal ownership of land. Landowner may include

all forms of collective ownership including joint tenants, tenants-in-common, and life tenants. The term landowner includes Indian Tribes, State governments, local governments, and non-governmental organizations that qualify as eligible entities are not eligible to participate as eligible landowners.

*Legal entity* means an entity that is created under Federal or State law and that:

(1) Owns land or an agricultural commodity, product, or livestock; or

(2) Produces an agricultural commodity, product, or livestock.

*Maintenance* means work performed to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to, manage, and prevent deterioration, repair damage, or replace the practice to its original condition if one or more components fail.

*Native* means a species that is indigenous and is a part of the original fauna or flora of the area.

*Natural Resources Conservation Service (NRCS)* is an agency of the United States Department of Agriculture.

*NRCS State Conservationist* means the NRCS employee authorized to implement the Grasslands Reserve Programs and direct and supervise NRCS activities in a State, Caribbean Area, or the Pacific Islands Area.

*Naturalized* means an introduced, desirable forage species that is ecologically adapted to the site and can perpetuate itself in the community without cultural treatment. The term "naturalized" does not include noxious weeds.

*Nesting season* means the time of year that animals (birds and others) build or otherwise find a place of refuge for purposes of reproduction or dormancy.

*Non-governmental organization* means any organization that:

(1) Is organized for, and at all times since the formation of the organization, has been operated principally for one or more of the conservation purposes specified in clause (i), (ii), (iii), or (iv) of section 170(h)(4)(A) of the Internal Revenue Code of 1986;

(2) Is an organization described in section 501(c)(3) of that Code that is ex-

empt from taxation under 501(a) of that Code; and

(3) Is described—

(i) in Section 509(a)(1) or 509(a)(2) of that Code; or

(ii) in Section 509(a)(3) of that Code and is controlled by an organization described in Section 509(a)(2) of that Code.

*Participant* means a person, legal entity, joint operation, or Indian Tribe, who is accepted to participate in GRP through a rental contract or option agreement to purchase an easement.

*Pastureland* means grazing lands comprised of introduced or domesticated native forage species that are used primarily for the production of livestock. These lands receive periodic renovation and/or cultural treatments, such as tillage, aeration, fertilization, mowing, weed control, and may be irrigated. This term does not include lands that are in rotation with crops.

*Permanent easement* means an easement that lasts in perpetuity or for the maximum duration allowed under the law of a State.

*Plant and animal biodiversity* means the existence of a wide variety of plant and animal species in their natural environments, providing for ecological functions and genetic variations.

*Private land* means land that is not owned by a governmental entity and includes Tribal Lands.

*Purchase price* means the amount paid to acquire an easement under a cooperative agreement between NRCS and an eligible entity. It is the fair market value of the easement minus the landowner donation.

*Rangeland* means a land cover or use category with a climax or potential plant cover composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. Rangeland includes lands re-vegetated naturally or artificially when routine management of that vegetation is accomplished mainly through manipulation of grazing. This term includes areas where introduced hardy and persistent grasses are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer

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being applied. Grasslands, savannas, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

*Rental contract* means the legal document that specifies the obligations and rights of a participant in GRP, including the annual rental payments to be provided to the participant for the length of the contract to maintain or restore grassland functions and values under the GRP.

*Restoration* means implementing any conservation practice, system of practices or activities to restore functions and values of grasslands and shrublands. The restoration may re-establish grassland functions and values on degraded land, or on land that has been converted to another use.

*Restoration agreement* means an agreement between the program participant and the USDA or eligible entity to carry out activities and conservation practices necessary to restore or improve the functions and values of that land. A restoration agreement will include a restoration plan.

*Restoration plan* is the portion of the restoration agreement that includes the schedule and conservation practices and activities to restore the functions and values of grasslands and shrublands, including protection of associated streams, ponds, and wetlands. The restoration plan incorporates the requirement that program participants will maintain GRP-funded conservation practices and activities for their expected lifespan as described in the plan.

*Right of enforcement* means a property interest in the easement the Chief may exercise on behalf of the United States under specific circumstances in order to enforce the terms of the conservation easement. The right of enforcement provides that the Chief has the right to inspect and enforce the easement if the eligible entity fails to uphold the easement or attempts to transfer the easement without first securing the consent of the Secretary.

*Secretary* means the Secretary of the U.S. Department of Agriculture, or his or her designee.

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*Shrubland* means land that the dominant plant species is shrubs, which are plants that are persistent, have woody stems, a relatively low growth habitat, and generally produces several basal shoots instead of a single bole.

*Significant decline* means a decrease of a species population to such an extent that it merits conservation priority, as determined by the NRCS State Conservationist in consultation with the State Technical Committee.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Tribal lands* means any lands owned by Indian Tribes, which are defined consistent with Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U. S. C. 450b(e)).

*USDA* means the U.S. Department of Agriculture, and its Agencies and Offices, as applicable.

[74 FR 3870, Jan. 21, 2009, as amended at 74 FR 42174, Aug. 21, 2009]

#### § 1415.4 Program requirements.

(a) Except as provided for under §1415.17, only landowners may submit applications for easements. For rental contracts, applicants must own or provide written evidence of control of the property for the duration of the rental contract.

(b) The easement or rental contract will require that the area be maintained in accordance with GRP goals and objectives for the term of the easement or rental contract, including the conservation, protection, enhancement, and, if necessary, restoration of the grassland functions and values.

(c) All participants in GRP are required to implement a grazing management plan approved by NRCS. In cases where a participant receives ranking points on the basis of resource concerns other than grazing land concerns, all such resource concerns will be addressed in an applicable conservation plan.

(d) The easement or rental contract must grant USDA or its representatives a right of ingress and egress to the easement or rental contract area. For easements, this access is legally

described by the conservation easement deed and the GRP grazing management plan. Access to rental contract areas is identified in the GRP grazing management plan.

(e) Easement participants are required to convey unencumbered title that is acceptable to the United States and provide consent or subordination agreements from each holder of a security or other interest in the land. The landowner must warrant that the easement granted the United States or eligible entity is superior to the rights of all others, except for exceptions to the title that are deemed acceptable by the USDA.

(f) Landowners are required to use a standard GRP conservation easement deed developed by USDA or developed by an eligible entity and approved by USDA under §1415.17 of this part. The easement grants development rights, title, and interest in the easement area in order to protect grassland and other conservation values.

(g) The program participant must comply with the terms of the easement or rental contract and comply with all terms and conditions of the grazing management plan and any associated conservation plan or restoration agreement.

(h) Easements and rental contracts allow, consistent with their terms and the program purposes, the following activities as outlined in the grazing management plan:

(1) Common grazing practices, including maintenance and necessary conservation practices and activities (e.g., prescribed grazing; upland wildlife habitat management; prescribed burning; fencing, watering, and feeding necessary for the raising of livestock; related forage and seed production) on the land in a manner that is consistent with maintaining the viability of grassland, forb, and shrub species common to the locality;

(2) Haying, mowing, or harvesting for seed production subject to appropriate restrictions, as determined by the State Conservationist, during the nesting season for birds in the local area that are in significant decline, or are conserved in accordance with Federal or State law;

(3) Fire pre-suppression, rehabilitation, and construction of firebreaks;

(4) Grazing related activities, such as fencing and livestock watering facilities;

(5) Facilities for power generation through renewable sources of energy production provided the scope and scale of the footprint of the facility and associated infrastructure is consistent with program purposes as determined by USDA through analysis of the potential site-specific environmental effects; and

(6) Other activities that USDA determines the manner, number, intensity, location, operation, and other features associated with the activity will not adversely affect the grassland resources or related conservation values protected under an easement or rental contract. This includes infrastructure development along existing rights-of-way, where the easement deed allows the landowner to grant rights-of-way when it is determined by NRCS that granting of such rights-of-way are in the public interest and that grassland resources and related conservation values will not be adversely impacted, and the landowner agrees to a restoration plan for the disturbed area as developed by NRCS, but at no cost to NRCS.

(i) Easement and rental contracts prohibit the following activities:

(1) The production of crops (other than hay), fruit trees, vineyards, or other agricultural commodity that is inconsistent with maintaining grazing land.

(2) Except as permitted under a restoration plan, the conduct of any other activity that would be inconsistent with maintaining grazing uses and related conservation values protected under an easement or rental contract.

(j) Rental contracts may be terminated by USDA without penalty or refund if the original participant dies, is declared legally incompetent, or is otherwise unavailable during the contract period.

(k) Participants, with the agreement of USDA, may convert a rental contract to an easement, provided that funds are available and the project meets conditions established by the USDA. Land cannot be enrolled in both

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a rental contract option and an easement enrollment option at the same time. The rental contract shall be terminated prior to the date the easement is recorded in the local land records office.

(l) Rental contract participants are required to suspend any existing cropland base and allotment history for the land under another program administered by the Secretary.

(m) Easement participants are required to eliminate any existing cropland base and allotment history for the land under another program administered by the Secretary.

[74 FR 3870, Jan. 21, 2009, as amended at 74 FR 42174, Aug. 21, 2009]

### § 1415.5 Land eligibility.

(a) GRP is available on privately owned lands, which include private and Tribal land. Publicly owned land is not eligible.

(b) Land is eligible for funding consideration if the NRCS State Conservationist determines that the land is:

(1) Grassland, land that contains forbs, or shrubland (including improved rangeland and pastureland) for which grazing is the predominant use; or

(2) Located in an area that has been historically dominated by grassland, forbs, or shrubland, and the State Conservationist, with advice from the State Technical Committee, determines that it is compatible with grazing uses and related conservation values, and—

(i) Could provide habitat for animal or plant populations of significant ecological value if the land is retained in its current use or is restored to a natural condition;

(ii) Contains historical or archeological resources; or

(iii) Would address issues raised by State, regional, and national conservation priorities.

(c) Incidental lands, in conjunction with eligible land, may also be considered for enrollment to allow for the efficient administration of an easement or rental contract. Incidental lands may include relatively small areas that do not specifically meet the eligibility requirements, but as a part of the land unit, may contribute to grassland functions and values and related

conservation values, or its inclusion may increase efficiencies in land surveying, easement management, and monitoring by reducing irregular boundaries.

(d) Land will not be enrolled if the functions and values of the grassland are already protected under an existing contract, easement, or deed restriction, or if the land already is in ownership by an entity whose purpose is to protect and conserve grassland and related conservation values. This land becomes eligible for enrollment in the GRP if the existing contract, easement, or deed restriction expires or is terminated and the grassland values and functions are no longer protected.

(e) Land on which gas, oil, earth, or other mineral rights exploration has been leased or is owned by someone other than the applicant may be offered for participation in the program. However, if an applicant submits an offer for an easement project, USDA will assess the potential impact that the third party rights may have upon the grassland resources. USDA reserves the right to deny funding for any application where there are exceptions to clear title on the property.

### § 1415.6 Participant eligibility.

To be eligible to participate in GRP, an applicant, except as otherwise described in § 1415.17:

(a) Must be a landowner for easement participation or be a landowner or have control of the eligible acreage being offered for rental contract participation;

(b) Agree to provide such information to USDA that is necessary or desirable to assist in its determination of eligibility for program benefits and for other program implementation purposes;

(c) Meet the Adjusted Gross Income requirements in 7 CFR part 1400 of this title, unless exempted under part 1400 of this title; and

(d) Meet the conservation compliance requirements found in part 12 of this title.

### § 1415.7 Application procedures.

(a) Applicants, except as otherwise described under § 1415.17, may submit an application through a USDA Service Center for participation in the GRP.



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Applications may be submitted throughout the year.

(b) By filing an application for participation, the applicant consents to a USDA representative entering upon the land offered for enrollment for purposes of assessing the grassland functions and values and for other activities that are necessary for the USDA to make an offer of enrollment. Generally, the applicant will be notified prior to a USDA representative entering upon their property.

(c) Applicants submit applications that identify the duration of the easement or rental contract for which they seek to enroll their land. Rental contracts may be for a duration of 10-years, 15-years, or 20-years; easements may be permanent in duration or for the maximum duration authorized by State law.

### **§ 1415.8 Establishing priority for enrollment of properties.**

(a) USDA, at the national level, will provide to NRCS State Conservationists and FSA State Executive Directors, national guidelines for establishing State specific ranking criteria, for selection of applications for funding.

(b) NRCS State Conservationists and FSA State Executive Directors, with advice from the State Technical Committee, establish criteria to evaluate and rank applications for easement and rental contract enrollment, including applications from eligible entities under §1415.17, following the guidance established in paragraph (a) of this section.

(c) Ranking criteria shall emphasize support for:

- (1) Grazing operations;
- (2) Protection of grassland, land that contains forbs, and shrubland at the greatest risk from the threat of conversion to uses other than grazing;
- (3) Plant and animal biodiversity; and
- (4) In ranking parcels offered by eligible entities—
  - (i) Leveraging of non-Federal funds, and
  - (ii) Entity contributions in excess of 50 percent of the purchase price, as defined in §1415.3.

(d) When funding is available, NRCS State Conservationists and FSA State Executive Directors, will periodically select for funding the highest ranked applications, including applications from entities under §1415.17, based on applicant and land eligibility and the State-developed ranking criteria.

(e) NRCS State Conservationists and FSA State Executive Directors may establish separate ranking pools to address, for example, specific conservation issues raised by State, regional, and national conservation priorities.

(f) The NRCS State Conservationist and FSA State Executive Director, with advice from the State Technical Committee, may emphasize enrollment of unique grasslands or specific geographic areas of the State.

(g) The FSA State Executive Director and NRCS State Conservationist, with advice from the State Technical Committee, will select applications for funding.

(h) If available funds are insufficient to accept the highest ranked application, and the applicant is not interested in reducing the acres offered to match available funding, the State Conservationist or State Executive Director may select a lower ranked application that can be fully funded.

(i) Land enrolled in a Conservation Reserve Program (CRP) contract that is within one year of the scheduled expiration date shall receive a priority for enrollment. To receive this priority, the following criteria must be met:

- (1) The land must be eligible as defined in §1415.5;
  - (2) USDA must determine it is of high ecological value and under significant threat of conversion to uses other than grazing;
  - (3) The land must be offered for easement or 20-year rental contract enrollment;
  - (4) Expired CRP land enrolled under this priority shall not exceed 10 percent of the total number of acres accepted for enrollment in GRP in any year; and
  - (5) This priority applies only up to 12 months before the scheduled expiration of the CRP contract.
- (j) USDA will manage the program nationally to ensure that, to the extent

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practicable, no more than 60 percent of funds are used for the purchase of easements, either directly or through cooperative agreements with eligible entities as set forth in §1415.17, and no more than 40 percent of funds are used for rental contracts.

### **§ 1415.9 Enrollment of easements and rental contracts.**

(a) Based on the priority ranking, NRCS or FSA, as appropriate, will notify applicants in writing of their tentative acceptance into the program for either rental contract or conservation easement options. Enrollment under cooperative agreements is described under §1415.17. The letter notifies the applicant of the intent to continue the enrollment process unless otherwise notified by the applicant.

(b) An offer of tentative acceptance into the program neither binds USDA to acquire an easement or enter into a rental contract, nor binds the applicant to convey an easement, enter into a rental contract, or agree to restoration activities.

(c) Offer of enrollment will be through either:

(1) An option agreement to purchase an easement presented by NRCS to the applicant, which will describe the easement; the easement terms and conditions; and other terms and conditions that may be required by NRCS; or

(2) A rental contract will be presented by FSA to the applicant, which will describe the contract area; the contract terms and conditions, and other terms and conditions that may be required by FSA.

(d) For rental contracts, land shall be considered to be enrolled in GRP once an FSA representative approves the GRP rental contract. FSA may withdraw the offer before approval of the contract due to lack of available funds or other reasons.

(e) For easements, after the option agreement to purchase an easement is executed by NRCS and the participant, the land will be considered enrolled in the GRP. NRCS will proceed with the development of the grazing management plan, or conservation or restoration plans if applicable, and various easement acquisition activities, which may include conducting a legal survey

of the easement area, securing necessary subordination agreements, procuring title insurance, and conducting other activities necessary to record the easement or implement the GRP.

(f) Prior to closing an easement, NRCS may withdraw the land from enrollment at any time due to lack of available funds, title concerns, or other reasons.

### **§ 1415.10 Compensation for easements and rental contracts acquired by the Secretary.**

(a) The Chief shall not pay more than the fair market value of the land, less the grazing value of the land encumbered by the easement.

(b) To determine this amount, the Chief shall pay as compensation the lowest of:

(1) The fair market value of the land encumbered by the easement as determined by the Chief using—

(i) The Uniform Standards of Professional Appraisal Practice; or

(ii) An area-wide market analysis or market survey.

(2) The amount corresponding to a geographical cap, as determined by the State Conservationist with advice from the State Technical Committee; or

(3) An offer made by the landowner.

(c) For 10-, 15-, and 20-year rental contracts, the participant will receive not more than 75 percent of the grazing value in an annual payment for the length of the contract, as determined by FSA. As provided by the regulations at part 1400 of this title, payments made under one or more rental contracts to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$50,000 per year.

(d) In order to provide for better uniformity among States, the FSA Administrator and the NRCS Chief may review and adjust, as appropriate, State or other geographically based payment rates for rental contracts.

(e) Easement or rental contract payments received by a participant shall be in addition to, and not affect, the total amount of payments that the participant is otherwise eligible to receive under other USDA programs.

(f) Easement payments will be made in a single payment to the landowner

unless otherwise requested by the landowner.

(g) USDA may accept and use contributions of non-Federal funds to support the purposes of the program. These funds are available to USDA without further appropriation and until expended, to carry out the program.

(h) USDA asserts no direct or indirect interest on environmental credits that may result from GRP-funded conservation practices and activities through a GRP rental contract, easement, or restoration agreement, except:

(1) In the event the participant sells or trades credits arising from GRP funded activities, USDA retains the authority to ensure that the requirements for GRP rental contracts, easements, or restoration agreements are met and maintained consistent with this part; and

(2) If activities required under an environmental credit agreement may affect land covered under a GRP rental contract, easement, or restoration agreement, participants are highly encouraged to request a compatibility assessment from USDA prior to entering into such agreements.

#### § 1415.11 Restoration agreements.

(a) Restoration agreements are only authorized to be used in conjunction with easements and rental contracts. NRCS, in consultation with the program participant, determines if the grassland resources are adequate to meet the participant's objectives and the purposes of the program, or if a restoration agreement is needed. Such a determination is also subject to the availability of funding. USDA may condition participation in the program upon the execution of a restoration agreement depending on the condition of the grassland resources. When the functions and values of the grassland are determined adequate by NRCS, a restoration agreement is not required. However, if a restoration agreement is required, NRCS will set the terms of the restoration agreement. The restoration plan component of the restoration agreement identifies conservation practices and activities necessary to restore or improve the func-

tions and values of the grassland to meet both USDA and the participant's objective and the purposes of the program. If the functions and values of the grassland decline while the land is subject to a GRP easement or rental contract through no fault of the participant, the participant may enter into a restoration agreement at that time to improve the functions and values with USDA approval and when funds are available.

(b) The NRCS State Conservationist, with advice from the State Technical Committee and in consultation with FSA, determines the conservation practices and activities, and cost-share percentages, not to exceed statutory limits, available under the GRP. A list of conservation practices and activities approved for cost-share assistance under GRP restoration plans is available to the public through the local USDA Service Center. NRCS may work through the local conservation district with the program participant to determine the terms of the restoration plan. The conservation district may assist NRCS with determining eligible conservation practices and activities and approving restoration agreements.

(c) Only approved conservation practices and activities are eligible for cost-sharing. Payments under the GRP restoration agreements may be made to the participant of not more than 50 percent for the cost of carrying out the conservation practices or activities. As provided by the regulations at part 1400 of this chapter, payments made under one or more restoration agreements to a person or legal entity, directly or indirectly, may not exceed, in the aggregate, \$50,000 per year.

(d) The participant is responsible for the operation and maintenance of conservation practices in accordance with the restoration agreement.

(e) All conservation practices must be implemented in accordance with the NRCS Field Office Technical Guide.

(f) Technical assistance is provided by NRCS, or an approved third party.

(g) If the participant is receiving cost-share for the same conservation practice or activity from another conservation program, USDA will adjust the GRP cost-share rate proportionately so that the amount received by

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the participant does not exceed 100 percent of the costs of restoration. The participant cannot receive cost-share from more than one USDA cost-share program for the same conservation practice or activity on the same land.

(h) Cost-share payments may be made only upon a determination by a qualified individual approved by the NRCS State Conservationist that an eligible restoration practice has been established in compliance with appropriate standards and specifications.

(i) Conservation practices and activities identified in the restoration plan may be implemented by the participant or other designee.

(j) Cost-share payments will not be made for conservation practices or activities implemented or initiated prior to the approval of a rental contract or easement acquisition unless a written waiver is granted by the State Conservationist or State Executive Director, as appropriate, prior to installation of the practice.

(k) Upon transfer of an easement with a restoration agreement to an eligible entity as described in §1415.18, the entity shall be responsible for administration of the agreement, and providing funds for payment of any costs associated with the completion of the restoration agreement. The eligible entity may, with participant consent, revise an existing restoration agreement or develop a new restoration agreement. Restoration plans must be consistent with the grazing management plan or any associated conservation plan as described in §1415.4.

(l) Cooperating entities under §1415.17 shall be responsible for development, administration, and implementation costs of restoration plans. Restoration plans must be consistent with the grazing management plan or any associated conservation plan as described in §1415.4.

### **§ 1415.12 Modifications to easements and rental contracts.**

(a) After an easement has been recorded, no substantive modification will be made to the easement.

(b) State Conservationists may approve modifications for restoration agreements and grazing management plans, or conservation plans where ap-

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plicable, as long as the modifications do not affect the provisions of the easement and meet program objectives.

(c) USDA may approve modifications to rental contracts, including corresponding changes to conservation plans, grazing management plans, and restoration plans, to facilitate the practical administration and management of the enrolled area so long as the modification will not adversely affect the grassland functions and values for which the land was enrolled.

### **§ 1415.13 Transfer of land.**

(a) Any transfer of the property prior to an applicant's acceptance into the program shall void the offer of enrollment, unless at the option of the State Conservationist or State Executive Director, as appropriate, an offer is extended to the new landowner and the new landowner agrees to the same easement or rental contract terms and conditions.

(b) After acreage is accepted in the program, for easements with multiple payments, any remaining easement payments will be made to the original participant unless NRCS receives an assignment of proceeds.

(c) Future annual rental payments will be made to the successor participant.

(d) The new landowner is responsible for complying with the terms of the recorded easement and the contract successor is responsible for complying with the terms of the rental contract and for assuring completion of all activities and practices required by any associated restoration agreement. Eligible cost-share payments will be made to the new participant upon presentation that the successor assumed the costs of establishing the practices.

(e) With respect to any and all payments owed to participants, the United States bears no responsibility for any full payments or partial distributions of funds between the original participant and the participant's successor. In the event of a dispute or claim on the distribution of cost-share payments, USDA may withhold payments without the accrual of interest pending an agreement or adjudication on the rights to the funds.

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(f) The rights granted to the United States in an easement shall apply to any of its agents or assigns. All obligations of the participant under the GRP conservation easement deed also bind the participant's heirs, successors, agents, assigns, lessees, and any other person claiming under them.

(g) Rental contracts may be transferred to another landowner, operator or tenant that acquires an interest in the land enrolled in GRP. The successor must be determined by FSA to be eligible to participate in GRP and must assume full responsibility under the contract. FSA may require a participant to refund all or a portion of any financial assistance awarded under GRP, plus interest, if the participant sells or loses control of the land under a GRP rental contract, and the new landowner, operator, or tenant is not eligible to participate in the program or declines to assume responsibility under the contract.

### § 1415.14 Misrepresentation and violations.

(a) The following provisions apply to violations of rental contracts:

(1) Rental contract violations, determinations, and appeals are handled in accordance with the terms of the rental contract.

(2) A participant who is determined to have erroneously represented any fact affecting a program determination made in accordance with this part may not be entitled to rental contract payments and must refund to CCC all payments, plus interest in accordance with part 1403 of this title.

(3) In the event of a violation of a rental contract, the participant will be given notice and an opportunity to voluntarily correct the violation within 30 days of the date of the notice, or such additional time as CCC may allow. Failure to correct the violation may result in termination of the rental contract.

(b) The following provisions apply to violations of easement deeds:

(1) Easement violations are handled under the terms of the easement deed.

(2) Upon notification of the participant, NRCS has the right to enter upon the easement area at any time to monitor compliance with the terms of the

GRP conservation easement deed or remedy deficiencies or violations.

(3) When NRCS believes there may be a violation of the terms of the GRP conservation easement deed, NRCS may enter the property without prior notice.

(4) The participant will be liable for any costs incurred by the United States as a result of the participant's negligence or failure to comply with the easement terms and conditions.

(c) USDA may require the participant to refund all or part of any payments received by the participant under the program contract or agreement.

(d) In addition to any and all legal and equitable remedies available to the United States under applicable law, USDA may withhold any easement payment, rental payment, or cost-share payments owing to the participant at any time there is a material breach of the easement covenants, rental contract, or any contract. Such withheld funds may be used to offset costs incurred by the United States in any remedial actions or retained as damages pursuant to court order or settlement agreement.

(e) Under a GRP conservation easement, the United States shall be entitled to recover any and all administrative and legal costs, including attorney's fees or expenses, associated with any enforcement or remedial action.

### § 1415.15 Payments not subject to claims.

Any cost-share, rental, or easement payment or portion thereof due any person under this part shall be allowed without regard to any claim or lien in favor of any creditor, except agencies of the United States Government.

### § 1415.16 Assignments.

(a) Any person entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

(b) If a participant that is entitled to a payment dies, is declared legally incompetent, or is otherwise unable to receive the payment, or is succeeded by another person who renders or completes the required performance, such a participant may be eligible to receive

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payment in such a manner as USDA determines is fair and reasonable in light of all the circumstances.

### § 1415.17 Cooperative agreements.

(a) NRCS may enter into cooperative agreements which establish terms and conditions under which an eligible entity shall use funds provided by NRCS to own, write, and enforce a grassland protection easement.

(b) To be eligible to receive GRP funding, an eligible entity must demonstrate:

(1) A commitment to long-term conservation of agricultural lands, ranchland, or grassland for grazing and conservation purposes;

(2) A capability to acquire, manage, and enforce easements;

(3) Sufficient number of staff dedicated to monitoring and easement stewardship;

(4) The availability of funds; and

(5) For non-governmental organizations, the existence of a dedicated account for the purposes of easement management, monitoring, and enforcement of each easement held by the eligible entity.

(c) NRCS enters into a cooperative agreement with those eligible entities selected for funding. Once a proposal is selected by the State Conservationist, the eligible entity must work with the appropriate State Conservationist to finalize and sign the cooperative agreement, incorporating all necessary GRP requirements. The cooperative agreement addresses:

(1) The interests in land to be acquired, including the form of the easement deeds to be used and terms and conditions.

(2) The management and enforcement of the interests acquired.

(3) The responsibilities of NRCS.

(4) The responsibilities of the eligible entity on lands acquired with the assistance of GRP.

(5) An attachment listing the parcels accepted by the State Conservationist, landowners' names, addresses, location map(s), and other relevant information.

(6) The allowance of parcel substitution upon mutual agreement of the parties.

(7) The manner in which violations are addressed.

(8) The right of the Secretary to conduct periodic inspections to verify the eligible entity's enforcement of the easements.

(9) The manner in which the eligible entity will evaluate and report the use of funds to the Secretary.

(10) The eligible entity's agreement to assume the costs incurred in administering and enforcing the easement, including the costs of restoration and rehabilitation of the land as specified by the owner and eligible entity. The entity will also assume the responsibility for enforcing the grazing management plan, or conservation plan, as applicable. The eligible entity must incorporate any required plan into the conservation easement deed by reference or otherwise.

(11) If applicable, the ability of an eligible entity to include a charitable donation or qualified conservation contribution (as defined by Section 170(h) of the Internal Revenue Code of 1986) from the landowner as part of the entity's share of the cost to purchase the easement.

(12) The schedule of payments to an eligible entity, as agreed to by NRCS and the eligible entity.

(13) That GRP funds may not be used for expenditures such as appraisals, surveys, title insurance, legal fees, costs of easement monitoring, and other related administrative and transaction costs incurred by the entity.

(14) That NRCS may provide a share of the purchase price of an easement under the program, and that the eligible entity shall be required to provide a share of the purchase price at least equivalent to that provided by NRCS. The Federal share will be no more than 50 percent of the purchase price, as defined in § 1415.3.

(15) The eligible entity's succession plan that describes its successors or assigns to hold, manage, and enforce the interests in land acquired in the event that the eligible entity is no longer able to fulfill its obligations under the cooperative agreement entered into with NRCS.

(16) Other requirements deemed necessary by NRCS to protect the interests of the United States.

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(d) Under the cooperative agreement option, a landowner grants an easement to an eligible entity with which NRCS has entered into a GRP cooperative agreement. The easement shall require that the easement area be maintained in accordance with GRP goals and objectives for the term of the easement. Easements are acquired in perpetuity, except where State law prohibits a permanent easement.

(e) The entity may use its own terms and conditions in the conservation easement deed, but a conservation easement deed template used by the eligible entity shall be submitted to the Chief within 30 days of the signing of the cooperative agreement. The conservation easement deed templates shall be reviewed and approved by the Chief. NRCS reserves the right to require additional specific language or to remove language in the conservation easement deed to protect the interests of the United States.

(1) In order to protect the public investment, the conveyance document must contain a "right of enforcement." NRCS shall specify the terms for the "right of enforcement" clause to read as set forth in the GRP cooperative agreement. This right is a vested property right and cannot be condemned or terminated by State or local government.

(2) The eligible entity shall acquire, hold, manage and enforce the easement. The eligible entity may have the option to enter into an agreement with governmental or private organizations to carry out easement stewardship responsibilities if approved by NRCS.

(3) Prior to closing, NRCS must sign an acceptance of the conservation easement, concurring with the terms of the conservation easement and accepting its interest in the conservation easement deed.

(4) All conservation easement deeds acquired with GRP funds must be recorded in the appropriate land records. Proof of recordation shall be provided to NRCS by the eligible entity.

(5) The conservation easement deed must include an indemnification clause requiring the participant (grantor) to indemnify and hold harmless the United States from any liability arising

from or related to the property enrolled in GRP.

[74 FR 3870, Jan. 21, 2009, as amended at 74 FR 42174, Aug. 21, 2009]

### § 1415.18 Easement transfer to eligible entities.

(a) NRCS may transfer title of ownership to an easement to an eligible entity to hold and enforce an easement if:

(1) The Chief determines that transfer will promote protection of grassland, land that contains forbs, or shrubland;

(2) The owner authorizes the eligible entity to hold and enforce the easement; and

(3) The eligible entity agrees to assume the costs incurred in administering and enforcing the easement, including the costs of restoration or rehabilitation of the land as specified by the owner and the eligible entity, and the entity assumes responsibility for enforcing the grazing management plan, or conservation plan as applicable, as approved by NRCS.

(b) NRCS has the right to conduct periodic inspections and enforce the easement, which includes the terms and requirements set forth in the grazing management plan, and any associated restoration or conservation plan, for any easements transferred pursuant to this section.

(c) An eligible entity that seeks to hold and enforce an easement shall apply to the NRCS State Conservationist for approval.

(d) The Chief may approve an application if the eligible entity:

(1) Has relevant experience necessary, as appropriate for the application, to administer an easement on grassland, land that contains forbs, or shrublands;

(2) Has a charter that describes the commitment of the eligible entity to conserving ranchland, agricultural land, or grassland for grazing and conservation purposes;

(3) Possesses the human and financial resources necessary, as determined by the Chief, NRCS, to effectuate the purposes of the charter;

(4) Has sufficient financial resources to carry out easement administrative and enforcement activities;

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(5) Presents proof of a dedicated fund for enforcement as described in § 1415.17(b)(5), if the entity is a non-governmental organization; and

(6) Presents documentation that the landowner has concurred in the transfer.

(e) The Chief, his or her successors and assigns, shall retain a “right of enforcement” in any transferred GRP funded easement, which provides the Secretary the right to inspect the easement for violations and enforce the terms of this easement through any and all authorities available under Federal or State law, in the event that the eligible entity fails to enforce the terms of the easement, as determined by NRCS.

(f) Should an easement be transferred pursuant to this section, all warranties and indemnifications provided for in the deed shall continue to apply to the United States. Upon transfer of the easement, the easement holder shall be responsible for enforcement of the grazing management plan, as approved by NRCS, and implementation of any associated conservation or restoration plans and costs of such restoration, as agreed to by the landowner and entity.

(g) Due to the Federal interest in the GRP easement, transferred GRP funded easements cannot be condemned.

## § 1415.19 Appeals.

(a) Applicants or participants may obtain a review of any administrative determination concerning eligibility for participation utilizing the administrative appeal regulations provided in parts 614 and 780 of this title.

(b) Before a person may seek judicial review of any administrative action concerning eligibility for program participation under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for the purposes of judicial review, no decision shall be a final agency action except a decision of the Chief, NRCS or the FSA Administrator, as applicable, under these procedures.

(c) Any appraisals, market analysis, or supporting documentation that may be used by NRCS in determining property value are considered confidential information, and shall only be dis-

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closed as determined at the sole discretion of NRCS in accordance with applicable law.

(d) Enforcement actions undertaken by NRCS in furtherance of its Federally-held property rights are under the jurisdiction of the Federal District Court and are not subject to review under administrative appeal regulations.

## § 1415.20 Scheme or device.

(a) If it is determined by USDA that a participant has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such participant during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by USDA.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices, rental contracts, or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) A participant who succeeds to the responsibilities under this part shall report in writing to USDA any interest of any kind in enrolled land that is held by a predecessor or any lender. A failure of full disclosure will be considered a scheme or device under this section.

## PART 1416—2006 EMERGENCY AGRICULTURAL DISASTER ASSISTANCE PROGRAMS

### Subpart A—General Provisions for 2006 Emergency Agricultural Disaster Assistance Programs

#### Sec.

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